IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-521

ROGERS C.B. MORTON,
SECRETARY OF THE INTERIOR,

Petitioner,

v.

DELTA MINING, INC.,
G. M. & W. COAL COMPANY, INC.,
AND
EDWARD MEARS, *et al.*,
d/b/a M. Y. COAL COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF OF RESPONDENT EDWARD MEARS, *et al.*

JOHN L. KILCULLEN
Webster, Kilcullen &
Chamberlain
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Attorney for Respondent

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

Page

THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE THE RECORD BEFORE IT FAILED TO DISCLOSE THE BASIS FOR THE PENALTY ASSESSMENT ORDERS 4

THE POSSIBILITY OF DE NOVO TRIAL IN THE DISTRICT COURTS DOES NOT CURE THE DEFECTS IN THE SECRETARY'S ASSESSMENT PROCEDURES 6

THE DE NOVO TRIAL PROVISION IS AMBIGUOUS AT BEST 7

THE SECRETARY CANNOT ASSESS PENALTIES WITHOUT MAKING THE STATUTORILY MANDATED FINDINGS AND DETERMINATION 8

THE ASSESSMENT ORDERS AGAINST RESPONDENT MEARS NEVER BECAME ADMINISTRATIVELY FINAL 11

CONCLUSION 14

Addendum 1-4

TABLE OF AUTHORITIES

Cases:

Atwoods Transport Lines v. U.S., 211 F.Supp. 168 (DC DC 1962), aff. 373 U.S. 377 13

CAB v. Delta Airlines, 367 U.S. 316, 6 L.Ed.2d 869 (1961) 6-7

Cole v. Young, 351 U.S. 536; 100 L.Ed. 1396 (1955) 13

Dairymen's League v. Brannan, 173 F.2d 57, cert. den. 338 U.S. 825 13-14

McKay v. Wahlenmaier, 226 F.2d 35 (DC Cir. 1955) 14

M. Kraus and Bros. v. U.S., 327 U.S. 614; 90 L.Ed. 894 (1946) 14

	Page
NLRB v. Metropolitan Life Ins. Co., 380 U.S. 438, 13 L.Ed.2d 951 (1965)	10
Peters v. Hobby, 349 U.S. 331, 99 L.Ed. 1129 (1955)	7
Rayonier, Inc. v. NLRB, 380 F.2d 187 (CA5 1967)	11
Red Lion Broadcasting Co. v. FCC, 381 F.2d 908 (DC Cir. 1967)	14
Service v. Dulles, 354 U.S. 363, 1 L.Ed.2d 1403 (1957)	13
Stark v. Wickard, 321 U.S. 288, 88 L.Ed. 733 (1944)	7
Sun Oil Co. V. Burford, 130 F.2d 10 (5th Cir. 1942)	14
United States v. Chicago, Milwaukee and St. Paul R.R., 294 U.S. 499, 79 L.Ed. 1023 (1935)	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 197[illegible]

No. 74-521

ROGERS C.B. MORTON,
SECRETARY OF THE INTERIOR,

Petitioner,

v.

DELTA MINING, INC.,
G. M. & W. COAL COMPANY, INC.,
AND
EDWARD MEARS, *et al.*,
d/b/a M. Y. COAL COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF OF RESPONDENT EDWARD MEARS, *et al.*

The nub of the question presented here is whether the penalty assessment orders for which the Secretary sought enforcement in the district court were issued in conformity with the statutory procedures mandated under section 109(a) of the Act. The district court held

they were not, and the Court of Appeals agreed that they were not.

In the case of respondent Mears, two penalty assessment orders were issued by the Bureau of Mines Assessment Officer, one in the amount of $680 and the other in the amount of $1320. The proposed assessment orders were on pre-printed forms which contained no information other than a listing of various violation notice numbers, the dates they were issued, and the amount of the penalty assessments.[1] The assessment orders did not include any findings of fact that the cited violations had occurred nor did they furnish any information as to the basis on which the Assessment Officer arrived at the amounts of the penalties assessed, or indicate the nature of any procedural actions which may have taken place in connection with issuance of the assessment orders. Each assessment order was accompanied by a form letter from the Assessment Officer stating that unless, within 15 days, the mine operator filed a protest or a request for formal adjudication the proposed assessment order would become the final order of the Secretary.[2]

Respondent Mears filed timely protests to each of the proposed assessment orders, but subsequently received form letters from the Assessment Officer stating simply that the proposed assessment orders had been affirmed and would become final unless a request for formal adjudication was filed within 15 days.

[1] The two assessment orders are found at pages 108 and 111 of the Appendix.

[2] The form letters are reproduced as an Addendum to this brief, pp. 1 and 2.

(Addendum, pp. 3 and 4). No explanation was given as to whether or to what extent the Assessment Officer gave any consideration to the information furnished in respondent's protest letters, or the grounds on which the Assessment Officer rejected his protests and affirmed the original assessment orders.

The Secretary of the Interior thereafter filed in the district court a complaint for enforcement of the penalty assessment orders, and attached to his complaint an administrative record consisting in its entirety of the two proposed orders of assessment and two pre-printed finding of fact forms reciting that

> "I HEREBY FIND THAT THE VIOLATIONS CITED IN THE PROPOSED ORDER OF ASSESSMENT DATED _____, DID, IN FACT, OCCUR AND ACCORDINGLY ADOPT THE ASSESSMENT SET FORTH THEREIN AS FINAL.
>
> EVERETT TURNER
> ASSESSMENT OFFICER"

The date filled in on each of the finding of fact forms was a date several months after the date shown on the respective assessment orders. (App. 107, 110). The finding of fact forms were not served on respondent Mears at any time prior to the filing of the complaint for enforcement.

Respondent Mears filed a motion for judgment on the pleadings, or in the alternative for summary judgment, on grounds that the assessment orders were not lawfully issued pursuant to and in accordance with the civil penalty provisions of section 109(a) of the Act. In granting respondent's motion the district court concluded that section 109(a) requires that all final assessment orders must be supported by a decision incorporating findings of fact that the charged vio-

lations did occur and the amount of the penalty which is warranted. On appeal by the Secretary the Court of Appeals held that in the absence of express findings of fact relating to the statutory criteria for determining the amount of the penalty the assessment orders provided no assurance of any considered application of these criteria, and failed to satisfy the requirements of section 109(a)(3).

THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE THE RECORD BEFORE IT FAILED TO DISCLOSE THE BASIS FOR THE PENALTY ASSESSMENT ORDERS

The penalty assessment orders against respondent Mears were admittedly not preceded by an administrative determination that the charged violations had in fact occurred, and there was no showing that the penalties were determined in accordance with the six statutory criteria specified in section 109(a)(1) of the Act. The District Court had nothing before it to show how or in what manner the penalties were computed or whether they were lawfully determined in accordance with the statutory standards, and it thus had no basis for making a reasoned judgment respecting the appropriateness of the assessed penalties.

In his complaint for enforcement the Secretary was, in effect, asking the district court to blindly accept the validity of the assessment orders and render judgment against respondent Mears in the amount of the assessed penalties without any supporting administrative decision or factual findings which would reveal the reasons or

basis for the Secretary's action. In these circumstances the district court clearly had no choice other than to refuse enforcement and grant summary judgment for respondent.

There is even a question as to whether the district court had jurisdiction to entertain the complaint for enforcement inasmuch as it was not accompanied by a decision of the Secretary incorporating his findings of fact. The jurisdiction of the district courts to enforce penalty assessment orders of the Secretary is derived from section 109(a)(4) of the Act which specifies that upon filing a petition for enforcement:

> "The court shall have jurisdiction to enter a judgement enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the *order and decision* of the Secretary . . ." (Emphasis added).

As is evident, the statute by its terms authorizes enforcement of an "order and decision of the Secretary", and, accordingly, where the Secretary, as in the instant case, seeks enforcement of a naked order with no supporting decision the court lacks jurisdiction to grant enforcement of such an order.

On the state of the record the district court correctly decided that respondent was entitled to summary judgment. Since the Court did not have before it the requisite "order and decision of the Secretary" it could not, under section 109(a)(4), grant the Secretary's petition for enforcement.

THE POSSIBILITY OF DE NOVO TRIAL IN THE DISTRICT COURTS DOES NOT CURE THE DEFECTS IN THE SECRETARY'S ASSESSMENT PROCEDURES

The Secretary argues that his penalty assessment orders need not be accompanied by findings of fact or an administrative record because section 109(a)(4) provides for a *de novo* trial of all relevant issues in any proceeding brought in the district courts for enforcement of such orders. (Brief, p. 23).

This novel line of reasoning proceeds on the premise that even if the Secretary grossly disregards the statutory standards and procedures in issuing penalty assessment orders such orders are nevertheless valid because the underlying facts may be litigated *de novo* in the district courts. It also involves an assumption that the Secretary can abdicate his responsibility for administratively determining the facts as to either the occurrence of a violation or the appropriate penalty amount, and, by utilizing a mechanical procedure for grinding out *pro-forma* assessment orders, dump these functions into the lap of the district courts.

Such a procedure is inconsistent with established concepts and principles of administrative law. An administrative agency cannot seek the aid of the courts to enforce agency orders which have been improperly or invalidly issued. The adjudicative functions of an administrative agency must be carried out in accordance with, and in the mode prescribed by the statute investing it with the power to act, and an attempt by an agency to exercise a power without compliance with the procedural provisions laid down in the statute as to the manner of its exercise if a nullity. *CAB v. Delta*

Airlines 367 U.S. 316, 6 L.Ed.2d 869 (1961); *Peters v. Hobby* 349 U.S. 331, 99 L.Ed. 1129 (1955); *Stark v. Wickard* 321 U.S. 288, 88 L.Ed. 733 (1944). Failure of an administrative agency to make express findings of fact where such findings are required renders the administrative determination void. *United States v. Chicago, Milwaukee and St. Paul R.R.* 294 U.S. 499, 79 L.Ed. 1023 (1935).

It follows that where, as here, an agency has by-passed and disregarded the statutory standards for carrying out its adjudicative functions it cannot be heard to argue that its orders are nonetheless valid because the procedural deficiencies can be cured by a *de novo* trial in the district courts. Such an argument makes a mockery of the rules of administrative law.

THE DE NOVO TRIAL PROVISION IS AMBIGUOUS AT BEST

A further point to be noted is that the language of section 109(a)(4) respecting *de novo* consideration of factual issues in enforcement actions in the district courts states that:

> "The court shall consider and determine de novo all relevant issues, *except issues of fact which were or could have been litigated* in review proceedings before a court of appeals under section 106 of this Act. . ." (Emphasis added).

Because of this qualifying language the Secretary has previously taken the position that any issues of fact which *could have been litigated* in review proceedings under section 106 are not subject to trial *de novo* in the district courts. In practical effect this means that no

factual issues can be tried *de novo* since virtually all facts involved in every violation notice issued by a mine inspector are potentially subject to review proceedings under the Act, and thus "could have been litigated" under section 106. This very issue was raised before the district court below in the *Delta Mining Company* case, and government counsel took the position that since the factual issues respecting the charged violations could have been adjudicated in a Court of Appeals review under section 106 they could not be litigated *de novo* in the district court. He argued: "There were two opportunities at the administrative level before these proceedings to litigate this and the respondent failed to take advantage of these. He cannot again be given the opportunity to litigate the fact of the violation."[3]

Thus, the government, is now presenting to this Court an argument which is the polar opposite of the position it has asserted in enforcement cases in the district courts when the question of *de novo* litigation of factual issues has been raised.

THE SECRETARY CANNOT ASSESS PENALTIES WITHOUT MAKING THE STATUTORILY MANDATED FINDINGS AND DETERMINATION

The Secretary argues that the procedure prescribed in section 109(a)(3) was designed only to provide the person charged with a violation an *opportunity* for a public hearing. The government's brief states (p. 19):

[3]See Transcript of Pretrial Conference in *Morton v. Delta Mining Inc.*, p. 39, App. pp. 22-43.

"In our view the statutory language requires a decision incorporating findings of fact only when the mine operator has taken advantage of his 'opportunity for a public hearing'. . . . Thus, when a public hearing is held, the operator is entitled to a determination by 'decision incorporating findings of fact' that the violation occurred and that the penalty is warranted."

If, as thus contended, the Act requires the Secretary to make a *determination* only when a public hearing is held, it would follow that, absent a hearing, he may assess penalties in any casual manner he sees fit, and can apply whatever arbitrary schedule of penalty amounts may suit his fancy, as, indeed, he has done under the Part 100 assessment procedure.

Such a procedure cannot be supported by any reasonable interpretation of the statutory language which, by its plain words, directs the Secretary to *determine* both the fact of the violation and the amount of the penalty, and requires that he must consider six specific criteria for purposes of determining the penalty amount in each case. In the present case the record shows that the Secretary made no *determination* at all, but simply authorized issuance of the penalty assessment orders on the basis of a pre-set penalty schedule, and, notwithstanding the operators protest, treated such assessment orders as final and enforceable.

Although the record contains nothing to show that consideration was given to the six statutory criteria, the government's brief attempts to provide a rationale for the penalty amounts. In its brief the government attempts to explain that the assessment officer may have considered certain of the charged violations to be serious, and others nonserious, and could have applied

the gravity and negligence factors in a manner so as to arrive at penalty amounts in the lower levels of those permitted under the Secretary's published penalty schedule. (Brief, p. 32). The brief asserts that in the substantial number of cases the size of the penalty itself "indicates that the criteria were applied favorably", and consequently, "requiring findings by the Secretary showing the factors underlying the Secretary's decision to be lenient does not serve any interest of the operator." (Ibid).

This after-the-fact attempt to explain the rationale for a penalty assessment is no substitute for a contemporaneous agency decision spelling out the reasons for its action and the manner in which the statutory criteria were applied in arriving at its determinination. This Court as well as other courts have almost universally held that governmental agencies must articulate the underlying reasons or rationale for their administrative orders if such orders are to be upheld and enforced by the courts. In *NLRB v. Metropolitan Life Ins. Co.* 380 U.S. 438, 13 L.Ed.2d 951 (1965) this Court refused enforcement of a bargaining unit determination of the Labor Board because of the failure of the Board to document the reasons for the distinctions between its decisions in various other bargaining unit cases. In so holding the court stated:

> "Although Board counsel in his brief and argument has rationalized the various unit determinations in the variant factual situations of these cases on criteria other than a controlling effect being given to the extent of organization, *the integrity of the administrative process requires that courts may not accept counsel's post hoc rationalizations for agency actions. For reviewing courts to substitute counsel's rationale for that of the Board is incompatible with the orderly function of the process of judicial review.*" 380 U.S. at 444. (Emphasis added).

In *Rayonier, Inc. v. NLRB* 380 F.2d 187 (CA5 1967), it was held that the courts cannot provide a meaningful review of Board decisions if the Board refuses to explain its rulings. "If the Board's decisions are to withstand the challenge of judicial review, it should be due to the Board's open, logical, and rational reliance on the stated criteria. If the courts rationalize and apologize for unsupported Board decisions, then the system of judicial review will have failed to provide the salutory objective considered essential to an effective and fair quasi-judicial administration of law." 380 F.2d at 195.

THE ASSESSMENT ORDERS AGAINST RESPONDENT MEARS NEVER BECAME ADMINISTRATIVELY FINAL

Apart from the Secretary's failure to make the required findings and determinations, there is a further reason why the assessment orders issued to respondent Mears are unenforceable. This reason derives from the fact that the drafters of the Part 100 regulations neglected to include a provision whereby amended or reissued assessment orders of the type here involved would become final orders of the Secretary.

The record shows that upon receipt of each of the two assessment orders respondent Mears filed protests with the assessment officer, and the assessment officer then reissued the two amended proposed assessment

orders, which he later treated as final assessment orders of the Secretary of the Interior.

The Part 100 regulations as promulgated January 17, 1971 provided (section 100.4(e)) that where an operator failed to timely protest an initial proposed assessment order "he shall be deemed to have waived his right of protest including his right of formal adjudication and opportunity for hearing and the Proposed Assessment Order shall become the final assessment order of the Secretary of the Interior." However, where the operator filed a timely protest and the assessment officer sent him an amended or reissued proposed assessment order the regulations explicitly provided that such amended or reissued proposed assessment order would become the final order of the Secretary only if accepted by the operator. The applicable section, 100.4(h), stated:

> "The operator or miner charged shall have 15 working days from date of receipt of such amended or reissued order to accept the amended or reissued order, whereupon it shall become the final assessment order of the Secretary, or to request formal adjudication with opportunity for hearing."

This is as far as the regulation went. It did not inform the operator that if he did not accept the amended or reissued order, or did not request adjudication, it would become the final order of the Secretary. Almost a year and a half after promulgation of the Part 100 regulation the Secretary discovered this critical omission in the language of section 100.4(h), and, on June 15, 1972 published in the Federal Register an amendment revising section 100.4(h) to read:

> "(h). The operator or miner charged shall have 20 days from the receipt of an amended or reissued proposed order to accept the proposed order, or to reject such proposed order in whole or in part and petition for hearing and formal adjudication. *Unless the operator or miner charged files a timely petition for hearing and formal adjudication an amended or reissued proposed assessment order shall become the final assessment order of the Secretary.*" (Emphasis added).

Thus, the procedural gap in the language respecting finality of reissued or amended proposed assessment orders was not closed until some time after the purported finality of the two reissued assessment orders served on respondent Mears,[4] and under the explicit language of the regulation in effect at the time of these orders neither the assessment officer nor the Secretary was empowered to treat them as final orders.

The virtually universal rule recognized by the courts is that regulations promulgated by governmental establishments are binding on the agency and its administrative officers. *Service v. Dulles* 354 U.S. 363, 1 L.Ed.2d 1403 (1957); *Atwoods Transport Lines v. U.S.* 211 F.Supp. 168 (DC DC 1962), aff. 373 U.S. 377. Any ambiguities in agency rules must be resolved against the government, regardless of practical reasons of awkward drafting. *Cole v. Young* 351 U.S. 536; 100 L.Ed. 1396 (1955). The intent of the draftsmen of a regulation is a past fact, and evidence that the regulation did not operate as it was designed to do, is inadmissible. *Dairymen's League v. Brannan* 173 F.2d 57,

---

[4] These two orders purportedly became final on June 1, 1972. See Addendum pp. 3 and 4.

cert. den. 338 U.S. 825. A regulation which fails to inform the public, or misleads the public, in respect to the duties or sanctions it imposes upon them is not a valid regulation. *M. Kraus and Bros. v. U.S.* 327 U.S. 614; 90 L.Ed. 894 (1946); *Sun Oil Co. v. Burford* 130 F.2d 10 (5th Cir. 1942); *Red Lion Broadcasting Co. v. FCC* 381 F.2d 908 (DC Cir. 1967); *McKay v. Wahlenmaier* 226 F.2d 35 (DC Cir. 1955).

CONCLUSION

The requirement that the Secretary must make findings of fact respecting the occurrence of a charged violation, and the appropriate penalty for such violation, is an integral and indispensable part of the assessment function mandated by the statute. The statute requires more than just "an opportunity for a hearing"; it directs the Secretary to *determine* in each particular case whether there was in fact a violation for which the mine operator should be assessed a penalty, and, taking into consideration the six statutory criteria, how much that penalty should be.

The penalties assessed here against respondent Mears were not supported by a decision by him either as to the fact of the alleged violation or the appropriate amount of the penalty. Because of his glaring deficiency the District Court properly refused to grant enforce-

ment to such orders, and the Court of Appeals properly affirmed.

Respectfully submitted,

JOHN L. KILCULLEN
Webster, Kilcullen &
Chamberlain
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Attorney for Respondent
Edward Mears, et al.,
d/b/a M. Y. Coal Company

ADDENDUM

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
WASHINGTON, D.C. 20240
ID: 36-02296-0

CERTIFIED MAIL
Return Receipt Requested

April 11, 1972

MY Coal Company
11 East Pike
Indiana, Pennsylvania 15701

Re: Mine: MY No. 1

Case No: 2307-2

Attention: Rocco Yanity

Gentlemen:

Enclosed is a Proposed Order of Assessment concerning the above-captioned matter setting out the number, date, section violated and the proposed amount for each citation. You may protest in writing the proposed assessment for each violation or request formal adjudication within fifteen working days of your receipt of this correspondence to:

Assessment Officer
U. S. Bureau of Mines
Room 210
1725 K Street, N. W.
Washington, D. C. 20005

Failure to file a protest to the proposed assessment or request formal adjudication within the aforementioned time will be considered a waiver of your right to protest, including your right to formal adjudication and an opportunity for a hearing. The matter will then become the final Order of the Secretary. In replying, please refer to the case number.

Payment of the assessment should be made in the form of a check or money order made payable to the U. S. Bureau of Mines and mailed to:

Chief, Division of Finance
U. S. Bureau of Mines
Building 20
Denver Federal Center
Denver, Colorado 80225

Sincerely yours,

Everett Turner
Assessment Officer

Enclosure
jd
cc:
Case File ADT Denver
Reading File MEM Files

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
WASHINGTON, D.C. 20240
ID: 36-02296-0

CERTIFIED MAIL
Return Receipt Requested

June 1, 1972

MY Coal Company
11 East Pike
Indiana, Pennsylvania 15701

Re: Mine: MY No. 1

Case No.: 2307-2

Attention: Rocco Yanity

Proposed Order (X)
Amended Order ( )
Affirmed Order ( )

Gentlemen:

No request for formal adjudication having been filed within fifteen (15) working days of your receipt of the above-captioned matter dated April 11, 1972, you are hereby notified that the said Order has now been entered as the Final Order of the Secretary. This Order is issued pursuant to Section 109(a) of the Federal Coal Mine Health and Safety Act of 1969, (30 U.S.C. 819) and the regulations promulgated thereunder as set forth in Title 30, Code of Federal Regulations, Part 100.

Unless payment of the assessment in the amount of $1,320.00 is made within ten (10) working days of the receipt of this letter, this matter will be referred to the Office of the Solicitor for the enforcement of said payment in an appropriate district court of the United States. In this connection, we call your attention to Section 109(a)(4) of the Federal Coal Mine Health and Safety Act of 1969, (30 U.S.C. 819), which sets forth in detail the method of enforcement of the Final Order of the Secretary.

Payment of the assessment should be made in the form of a check or money order made payable to the U. S. Bureau of Mines and mailed to:

Chief, Division of Finance
U. S. Bureau of Mines
Building 20
Denver Federal Center
Denver, Colorado 80225

If full payment for the case has been made, please disregard this letter.

Sincerely yours,

Everett Turner
Assessment Officer

cc:
ADT Denver

jd

2307-2 D-ltr 6/1/72 MY Coal Co. Rm 210 mf

BEST COPY AVAILABLE

POA
Rev. 9-3-71

United States Department of the Interior

BUREAU OF MINES
WASHINGTON, D.C. 20240
ID: 36-02396-0

CERTIFIED MAIL

Return Receipt Requested

October 26, 1971

M. Y. Coal Company
111 East Pike
Indiana, Pennsylvania 15701

Re: Mine: M. Y. No. 1
Case No: 2307-1

Attention: Rocco Yanity, Superintendent

Send affirming Letter 12-2-71

Received 12-09-71

Gentlemen:

Enclosed is a Proposed Order of Assessment concerning the above-captioned matter setting out the number, date, section violated and the proposed amount for each citation. You may protest in writing the proposed assessment for each violation or request formal adjudication within fifteen working days of your receipt of this correspondence to:

Assessment Officer
U. S. Bureau of Mines
Room 635
4015 Wilson Boulevard
Arlington, Virginia 22203

Failure to file a protest to the proposed assessment or request formal adjudication within the afore-mentioned time will be considered a waiver of your right to protest including your right to formal adjudication and an opportunity for a hearing. The matter will then become the final Order of the Secretary. In replying please refer to the case number.

Payment of the assessment should be made in the form of check or money order made payable to the U. S. Bureau of Mines and mailed to:

Chief, Division of Finance
U. S. Bureau of Mines
Building 20
Denver Federal Center
Denver, Colorado 80225

Sincerely yours,

Everett Turner

Everett Turner
Assessment Officer

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S). REQUIRED FEE(S) PAID.

☐ Show to whom, date and address of delivery

☐ Deliver ONLY to addressee

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

SIGNATURE OF ADDRESSEE OR AGENT, IF ANY

DATE OF DELIVERY

M. Y. Coal Company

BUREAU OF MINES
WASHINGTON, D.C. 20240
ID: 36-02396-0

CERTIFIED MAIL
Return Receipt Requested

June 1, 1972

Re: Mine: M. Y. No. 1
Case No.: 2307-1

Proposed Order ( )
Amended Order ( )
Affirmed Order (X

M. Y. Coal Company
111 East Pike
Indiana, Pennsylvania 15701

Attention: Rocco Yanity, Superintendent

Gentlemen:

No request for formal adjudication having been filed within fifteen (15) working days of your receipt of the above-captioned matter dated 12/20/71, you are hereby notified that the said Order has now been entered as the final Order of the Secretary. This Order is issued pursuant to Section 109(a) of the Federal Coal Mine Health and Safety Act of 1969, (30 U.S.C. 819) and the regulations promulgated thereunder as set forth in Title 30, Code of Federal Regulations, Part 100.

Unless payment of the assessment in the amount of $680.00 is made within ten (10) working days of the receipt of this letter, this matter will be referred to the Office of the Solicitor for the enforcement of said payment in an appropriate district court of the United States. In this connection, we call your attention to Section 109(a)(4) of the Federal Coal Mine Health and Safety Act of 1969, (30 U.S.C. 819), which sets forth in detail the method of enforcement of the Final Order of the Secretary.

Payment of the assessment should be made in the form of a check or money order made payable to the U. S. Bureau of Mines and mailed to:

Chief, Division of Finance
U. S. Bureau of Mines
Building 20
Denver Federal Center
Denver, Colorado 80225

If full payment for the case has been made, please disregard this letter.

Sincerely yours,

Everett Turner

Everett Turner
Assessment Officer

2307-1 D-ltr 6/1/72 M. Y. Coal Co. Per 210 mlh

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)

☐ Show to whom, date and address of delivery

☐ Deliver ONLY to addressee

RECEIPT

Received the numbered article described below.

DATE OF DELIVERY

BEST COPY AVAILABLE